

1. The preliminary hearing Order should be affirmed.

2. Ms. Darlene Ann Robinson worked as a caregiver for Glenna L. Miller, who was bedridden after suffering from a stroke.

3. The outcome of this claim hinges upon Ms. Robinson's credibility. Ms. Robinson alleges that she injured her back and right hip while turning Ms. Miller during her shift that began at 5 p.m. on May 10 and ended at 8 a.m. on May 11, 1999. But other witnesses, Ms. Sharon Wyatt and Ms. Delinda Freeman, testified that Ms. Robinson told them that she injured her back at home removing an item from a dryer. Further, Ms. Miller's son, Elvin Lee Miller, testified that Ms. Robinson told him that she did not injure her back at his mother's home. The record also contains medical records that tend to support Ms. Robinson's claim.

4. Judge Barnes observed Ms. Robinson, Ms. Freeman, and Mr. Miller testify. The Judge also had the opportunity to study the testimony from Ms. Wyatt's deposition. After considering all of that evidence, the Judge found Ms. Robinson's testimony was not credible or persuasive. In this instance, the Appeals Board gives some deference to the Judge's impressions of Ms. Robinson's credibility and affirms the finding that Ms. Robinson failed to prove that she injured her back or right hip while caring for Ms. Miller.

5. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.<sup>2</sup>

6. Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.<sup>3</sup>

7. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.<sup>4</sup>

8. Because Ms. Robinson has failed to prove that she injured herself while caring for Ms. Miller, the request for preliminary hearing benefits should be denied.

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 1999 Supp. 44-501(a).

<sup>4</sup> K.S.A. 1999 Supp. 44-508(g).

9. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, the Appeals Board affirms the November 29, 1999 preliminary hearing Order entered by Judge Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director

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<sup>5</sup> K.S.A. 1999 Supp. 44-534a(a)(2).